

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF RHODE ISLAND**

UNITED STATES OF AMERICA)
and STATE OF RHODE ISLAND DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT)

Plaintiffs,)

v.)

AEROSOLS DANVILLE, INC. f/k/a KIK CUSTOM)
PRODUCTS, INC.; AVNET, INC.; BALLANTYNE)
LEGACY HOLDINGS, LLC; BIXBY INTERNATIONAL)
CORPORATION; CLEAN HARBORS OF BRAINTREE,)
INC. f/k/a RECYCLING INDUSTRIES INC.; CORNING)
INCORPORATED; ELECTRIC BOAT CORPORATION)
f/k/a GENERAL DYNAMICS CORPORATION/)
ELECTRIC BOAT DIVISION; LIFE TECHNOLOGIES)
CORPORATION; NSTAR ELECTRIC COMPANY f/k/a)
BOSTON EDISON COMPANY; OCG)
MICROELECTRONICS MATERIALS, INC. f/k/a OLIN)
HUNT SPECIALTY PRODUCTS, INC. f/k/a PHILIP A.)
HUNT CHEMICAL CORP.; STANLEY BLACK &)
DECKER, INC.; WASTE MANAGEMENT OF)
MASSACHUSETTS, INC.; WASTE MANAGEMENT OF)
RHODE ISLAND, INC.)

Defendants.)

Civil Action No. 1:22-cv-405

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorney, acting at the request of the Regional Administrator of the United States Environmental Protection Agency (“EPA”) for Region I, and the State of Rhode Island (“State”), by authority of the Director of the Department of Environmental Management and through the undersigned attorney, file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought under Sections 106, 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9606, 9607 & 9613(g) (“CERCLA”), the Hazardous Waste Management Act, R.I. Gen. Laws §§ 23-19.1-1 *et seq.*, the Refuse Disposal Act, R.I. Gen. Laws §§ 23-18.9-1 *et seq.*, and the Rhode Island Industrial Property Remediation and Reuse Act, R.I. Gen. Laws §§ 23-19.14-1 *et seq.*

2. The United States seeks to recover costs incurred in response to releases and threatened releases of hazardous substances into the environment at or from the Second Operable Unit (“OU2”) of the Landfill & Resource Recovery, Inc. Superfund Site (“Site”) located in North Smithfield, Providence County, Rhode Island. The United States further seeks injunctive relief requiring Defendants to take action to abate conditions at or near OU2 that may present an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at or from OU2. Finally, the United States seeks a declaratory judgment that all Defendants will be liable for any further response costs that the United States may incur as a result of a release or threatened release of hazardous substances into the environment at or from OU2.

3. The State of Rhode Island seeks to recover costs that have been and will be incurred by the State in connection with responses to the release and/or threatened release of hazardous substances into the environment at or from OU2 of the Site. The State further seeks injunctive relief requiring Defendants to take action to abate conditions at or near OU2 that may present an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the

environment at or from OU2. Finally, the State further seeks a declaratory judgment declaring that all Defendants will be liable for any further response costs that the State may incur as a result of a release or threatened release of hazardous substances into the environment at or from OU2.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action and over the parties under 28 U.S.C. §§ 1331 and 1345 and Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 & 9613(b). This Court has supplemental jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) and Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) & 9613(b), because the releases or threatened releases of hazardous substances that gave rise to this claim occurred in this district, and because the Site is located in this district.

THE DEFENDANTS

6. Aerosols Danville, Inc. d/b/a Voyant Beauty f/k/a KIK Custom Products, Inc., Avnet, Inc., Ballantyne Legacy Holdings, LLC, Bixby International Corporation, Clean Harbors of Braintree, Inc. f/k/a Recycling Industries. Inc., Corning Incorporated, Electric Boat Corporation f/k/a General Dynamics Corporation/Electric Boat Division, Life Technologies Corporation, NSTAR Electric Company d/b/a Eversource Energy f/k/a Boston Edison Company, OCG Microelectronics Materials, Inc. f/k/a Olin Hunt Specialty Products, Inc. f/k/a Philip A. Hunt Chemical Corp., and Stanley Black & Decker, Inc., are each companies that owned or possessed hazardous substances and by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of such

hazardous substances, which came to be located at the Site or are their successor entities (hereinafter “Generator Defendants”).

7. Clean Harbors of Braintree, Inc., Waste Management of Massachusetts, Inc., and Waste Management of Rhode Island, Inc., are each companies that accepted waste, which contained hazardous substances, for transport to the Site for disposal or are their successor entities (hereinafter “Transporter Defendants”).

8. Each of the Defendants is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

STATUTORY BACKGROUND

9. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants, and for funding the costs of such abatement and related enforcement activities, which are known as “response” actions, 42 U.S.C. §§ 9604(a), 9601(25).

10. Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), provides:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

11. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section –

...

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances [a “generator” of hazardous substances], and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance [a “transporter” of hazardous substances]

shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan...

12. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States is also authorized to seek injunctive relief necessary to abate the imminent and substantial endangerment to the public health or welfare, or the environment, that may result from an actual or threatened release of hazardous substance at or from a facility.

13. Under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the court shall enter a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs.

GENERAL ALLEGATIONS

14. The Site consists of an inactive landfill located in North Smithfield, Providence County, Rhode Island that formerly operated as a sand and gravel pit. The landfill began to accept solid waste for disposal in or about 1969. The landfill portion of the Site covers approximately 28 acres of a 36 acre parcel of land.

15. Acceptance of hazardous waste began in November 1977 and ceased by September 1979. Landfill operations continued until 1985, when the Rhode Island State Superior Court issued an order shutting down operations.

16. The Site was added to the National Priorities List in 1982.

17. To manage cleanup operations at the Site, EPA has divided response actions for the Site into portions referred to as “Operable Units.” Operable Unit 1 (“OU1”) consists of the closed landfill portion of the Site, while Operable Unit 2 (“OU2”) consists of the groundwater outside the boundary of the landfill.

18. OU1 is the subject of a 1997 Consent Decree.¹ Testing at OU1 in the 1980s revealed hazardous substances at and in the vicinity of the Site, including volatile organic compounds (“VOCs”) and metals such as arsenic, benzene, cadmium, carbon tetrachloride, chloroform, 1,2-dichloroethane, lead, methylene chloride, trichloroethene, tetrachloroethene, and zinc. EPA selected a remedy to clean up OU1 in the Record of Decision for OU1 (“OU1 ROD”) issued on September 29, 1988, which was subsequently modified by two Explanation of Significant Differences on March 8, 1991 and September 16, 1996.

19. The Operable Unit 2 (“OU2”) remedy consists of the response action identified in an EPA decision document, enacted April 2021, referred to as the Record of Decision Landfill & Resource Recovery, Inc. (L&RR) Superfund Site Operable Unit 02 (“OU2 ROD”). The response action for OU2 addresses groundwater outside the boundary of the waste management area (OU1) that has been impacted by the closed landfill.

20. Based on environmental investigations at OU2, EPA has determined that there are future potential threats to human health at the Site due to uncontrolled migration of contaminated

¹ *United States v. Landfill & Resource Recovery, Inc., et al.*, Case No. 1:97cv78 (D.R.I. 1997) (Torres, J.).

groundwater from the landfill. The presence of VOCs, metals, per- and polyfluorinated alkyl substances (“PFAS”), and other contaminants have been identified throughout groundwater at the Site at levels that present an unacceptable risk to human health and the environment.

21. OU2 of the Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. There has been a “release” or a “threatened release” of “hazardous substances” into the “environment” at or from OU2 of the Site, as those terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601.

23. In undertaking response actions to address the release or threat or release of hazardous substances at OU2 of the Site, EPA and the State have incurred and will continue to incur “response costs” as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The response costs incurred thus far were incurred in a manner not inconsistent with the National Contingency Plan, promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF
Cost Recovery Under CERCLA Section 107

24. The above paragraphs are re-alleged and incorporated herein by reference.

25. Each of the Generator Defendants, named in Paragraph 6, is liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), because each arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site, of hazardous substances that they owned or possessed, or is a successor in interest to such an entity.

26. Each of the Transporter Defendants, named in Paragraph 7, is liable under Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), because each accepted and transported hazardous substances to the Site for disposal there, or is a successor in interest to such an entity.

27. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of Defendants is jointly and severally liable for all OU2 response costs incurred by the United States and the State of Rhode Island, including enforcement costs and prejudgment interest.

SECOND CLAIM FOR RELIEF
Injunctive Relief Under CERCLA Section 106

28. The above paragraphs are re-alleged and incorporated herein by reference.

29. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances at or from OU2 of the Site.

30. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), each of Defendants is jointly and severally liable for injunctive relief to abate the danger or threat presented by a release or threatened release of hazardous substances into the environment at or from OU2 of the Site.

31. EPA has determined that the response actions selected in the OU2 ROD are necessary to abate the danger or threat at or from OU2 of the Site.

32. Therefore, under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), each of the Defendants is jointly and severally liable to undertake the remedial action as described in the OU2 ROD to abate the danger or threat at or from OU2 of the Site.

THIRD CLAIM FOR RELIEF
Cost Recovery by State Under CERCLA Section 107

33. The above paragraphs are re-alleged and incorporated herein by reference.

34. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section . . .

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person ... at any facility [a “generator” of hazardous substances]

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities [a “transporter” of hazardous substances] . . .

shall be liable for,

(A) all costs of removal or remedial action incurred by the United States Government . . . or a State . . . not inconsistent with the national contingency plan. . . .

35. Each of the Generator Defendants, named in Paragraph 7, is within the class of liable persons described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), because each arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at OU2 of hazardous substances that they owned or possessed, or is a successor in interest to such persons.

36. Each of the Transporter Defendants, named in Paragraph 8, is within the class of liable persons described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), because each accepted and transported hazardous substances to OU2 for disposal there, or is a successor in interest to such persons.

37. Each Defendant is liable for costs or any remedial actions incurred by the State at OU2 under Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

38. The State has incurred Response Costs in responding to releases and threatened releases at OU2. The State will continue to incur Response Costs within the meaning of Section

101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at OU2.

39. The State's actions taken and to be taken at OU2 and the Response Costs incurred incident to those actions are not inconsistent with the National Contingency Plan promulgated by EPA under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R., Part 300.

40. The costs incurred by the State in connection with OU2 were and are for actions taken in response to the release or threatened release of hazardous substances at OU2.

41. The State has satisfied any and all conditions precedent to the undertaking of response actions, the incurrence of Response Costs, and the recovery of those costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

42. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the Defendants is jointly and severally liable to the State for all costs incurred and to be incurred by the State at OU2.

43. Pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A), the State may act on behalf of the public by instituting civil proceedings to recover all further response costs associated with removal or remedial actions that may be incurred by the State, not inconsistent with the National Contingency Plan.

FOURTH CLAIM FOR RELIEF

Cost Recovery by State under Refuse Disposal Act

44. The above paragraphs are re-alleged and incorporated herein by reference.

45. There was, within the meaning of R.I. Gen. Laws § 23-18.1-7(12) disposal of solid wastes at OU2.

46. Each Defendant is a "person" within the meaning of R.I. Gen. Laws § 23-18.9-7(9).

47. Each Defendant is liable to the State for civil penalties and costs pursuant to R.I. Gen. Laws § 23-18.9-10.

FIFTH CLAIM FOR RELIEF

Cost Recovery by State under Hazardous Waste Management Act

48. The above paragraphs are re-alleged and incorporated herein by reference.

49. There was, within the meaning of R.I. Gen. Laws § 23-19.1-4, unpermitted disposal of hazardous wastes at OU2.

50. Each Defendant is a “person” within the meaning of R.I. Gen. Laws § 23-19.1-4(10).

51. Each Defendant is liable to the State for costs pursuant to R.I. Gen. Laws § 23-19.1-22 for disposal of hazardous waste at OU2.

SIXTH CLAIM FOR RELIEF

Cost Recovery by State under Industrial Property Remediation and Reuse Act

52. The above paragraphs are re-alleged and incorporated herein by reference.

53. There was, within the meaning of R.I. Gen. Laws § 23-19.1-4, unpermitted disposal of hazardous wastes at OU2.

54. Each Defendant is a “responsible party” within the meaning of R.I. Gen. Laws § 23-19.14-6.

55. Each Defendant is a “person” within the meaning of R.I. Gen. Laws § 23-19.14-3(h).

56. Each Defendant is jointly and severally liable for costs and any removal/remedial actions incurred by the State at OU2.

57. Each Defendant is jointly and severally liable for all costs incurred and to be incurred by the State at OU2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter judgment in favor of Plaintiffs and against the Defendants, jointly and severally, under Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A), for unreimbursed response costs incurred by the United States and the State relating to OU2, including enforcement costs and prejudgment interest, but excluding costs that are to be reimbursed under previously entered into administrative orders on consent;
- b. Enter an order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring the Defendants to perform the OU2 response action as described in the OU2 ROD;
- c. Enter a declaratory judgment on Defendants' liability that will be binding in any subsequent action for further response costs, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).
- d. Enter a judgment in favor of the State against the Defendants in accordance with R.I. Gen. Laws § 23-19.1-22 for unpermitted disposal of hazardous wastes at OU2.
- e. Enter an order pursuant to R.I. Gen. Laws 23-19.14-6, requiring the Defendants to perform the OU2 response action as described in the OU2 ROD.
- f. Enter a judgment in favor of the State against the Defendants in accordance with R.I. Gen. laws §§ 23-18.9-10; 23.19.1-1; and 23-19.14-6, awarding the State civil penalties and future response costs.
- g. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

TODD KIM
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United States Department of Justice

11/9/2022
Dated _____

/s/ Mae Bowen

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TERRANCE GRAY, P.E.
In his capacity as Director
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11/9/2022
Dated _____

/s/ Christina Hoefsmit

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